

CableLabs.

Cable Television Laboratories, Inc.

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OCT 18 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 18, 2000

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D. C. 20554

Re: Commercial Availability of Navigation Devices,
CS Docket No. 97-80

Dear Ms. Salas:

On behalf of Cable Television Laboratories, Inc. ("CableLabs") and the multiple system operators cited in the above-referenced proceeding, I am reporting on the status of the CableLabs's DFAST license (now referred to as the POD-Host Interface License Agreement or the PHI license) in response to the Commission's request in the Further Notice of Proposed Rulemaking and Declaratory Ruling, released September 18, 2000, in the above-captioned proceeding. I am also submitting the current version of the PHI license.

CableLabs and its members believe that adequate copy protection is critical to the digital transition. By protecting against unauthorized use of digital content, it will enhance the ability of cable systems and other distribution media to offer their customers a wide range of valuable programming and other services.

In the Declaratory Ruling, the Commission held that copy protection is permissible for signals going across the interface between the point-of-deployment ("POD") module and commercially available host devices in order to provide security and to protect high quality content. The OpenCable specifications include copy protection requirements for both the POD-Host interface (implemented through the PHI license) and the 1394 interface (implemented through the DTLA license) to other digital devices. These specifications and the PHI license are intended to facilitate the retail availability of navigation devices.

Since the issuance of the Declaratory Ruling, CableLabs has solicited and received substantial comments on the September 8, 2000 draft of the PHI license from the Motion Picture Association of America ("MPAA"), the Digital Transmission Licensing Administrator ("DTLA") (the licensing agent for the 5C companies)¹, Circuit City, and a few manufacturers. CableLabs also has had numerous discussions and conference calls with the parties with the objective of achieving a

¹ Sony, Matsushita, Intel, Toshiba and Hitachi developed the so-called "5C technology," which affords protection of copy-controlled material over high-speed bi-directional digital interfaces.

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consensus. Although substantial progress is being made on resolving disagreements over the specific terms of the copy protection requirements, negotiations continue between the parties. As soon as these negotiations are completed, CableLabs will submit a final version of the PHI license to the Commission. But it is important for the Commission to recognize that CableLabs does not control the principal parties to these negotiations and that revisions to the DTLA license agreement are also in dispute between these parties.

Therefore, CableLabs is submitting the current draft of the license agreement without the copy protection requirements.

The Commission may be assured, however, that CableLabs is working diligently to reach a compromise on these issues with MPAA, DTLA, and the consumer electronics industry as quickly as possible. As recently as yesterday, CableLabs received a proposal from MPAA in response to a compromise suggested by DTLA on October 14, 2000.

The cable industry appreciates the Commission's resolution of the regulatory aspect of the copy protection issue. We will keep the Commission informed of the ongoing progress of the negotiations and provide a written status report in 30 days. As stated above, once the final agreement is reached, CableLabs will submit the completed version of the PHI license to the Commission.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard R. Green".

Richard R. Green, Ph.D
President and Chief Executive Officer

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cc: Honorable William E. Kennard
Honorable Susan Ness
Honorable Gloria Tristani
Honorable Michael K. Powell
Honorable Harold Furchtgott-Roth
Deborah Lathen, Chief, Cable Services Bureau
William Johnson, Deputy Chief, Cable Services Bureau
Deborah Klein, Division Chief, Consumer Protection & Competition Division
Dale N. Hatfield, Chief, Office of Engineering & Technology
Robert M. Pepper, Chief, Office of Plans & Policy
Jonathan Levy, Economist, Office of Plans & Policy
Amy Nathan, Senior Legal Counsel, Office of Plans & Policy

NONEXCLUSIVE POD-HOST INTERFACE LICENSE AGREEMENT

THIS NONEXCLUSIVE POD-HOST INTERFACE LICENSE AGREEMENT (the "**Agreement**") is entered into this ____ day of October, 2000 (the "**Effective Date**"), by and between _____, having a place of business at _____ ("**Licensee**") and Cable Television Laboratories, Inc., having a place of business at 400 Centennial Parkway, Louisville, Colorado USA 80027-1266 ("**CableLabs**").

RECITALS

WHEREAS, CableLabs is a research and development company funded by the cable television industry;

WHEREAS, Licensee is in the business of, among other things, designing, developing, manufacturing and distributing components for use in the cable television industry;

WHEREAS, CableLabs through its OpenCable project has specified a set of functional requirements and interfaces to foster interoperability and retail availability among advanced digital set-top terminals and navigation devices to be deployed in cable networks. The OpenCable project includes specifications whereby national control centers and/or cable system head-ends may communicate with individual addressable POD Modules (as defined below) which are connected to set-top terminals or navigation devices for authorizing or de-authorizing digital services on a program by program basis (the "**OpenCable HOST-POD Specifications**"). The OpenCable HOST-POD Specifications include an Interface Specification, (the "**OpenCable HOST-POD Interface Specification**"), and a specification for protecting the content sent across such interface which includes the DFAST scrambling techniques (the "**OpenCable POD Copy Protection System Specification**");

WHEREAS, CableLabs has the rights to such DFAST scrambling technology, portions of which are embodied in a U.S. patent and foreign equivalents;

WHEREAS, CableLabs desires to grant licenses to the DFAST scrambling technology to allow manufacturers to create POD Modules and compatible Host Devices (as defined below) that are interoperable and Licensee desires to acquire a license to develop and evaluate the DFAST scrambling technology for the purpose of creating and distributing POD Modules or Host Devices as called for in the OpenCable HOST-POD Specifications.

WHEREAS, CableLabs desires to condition the grant of a license hereunder on CableLabs' verification that POD Modules and compatible Host Devices comply with the OpenCable HOST-POD Specifications, other applicable OpenCable specifications and the requirements of this Agreement and that such devices are also interoperable in order to foster retail availability.

NOW THEREFORE, in consideration of the terms and conditions set forth in this Agreement, the parties hereby agree as follows:

AGREEMENT

1. Definitions.

1.1 “Activation” means that the Licensee has executed an activation notice referenced in Section 3.2 and in the form of Exhibit D that is required to activate the Licensee’s manufacturing license.

1.2 “Cable Operator” means any cable operator that CableLabs identifies on its <www.cablelabs.com> website as a member.

1.3 “CableLabs Technology” means:

(a) the OpenCable HOST-POD Specifications and the DFAST Technology, provided however, that CableLabs Technology does not include any third party proprietary technology referenced in or required by the OpenCable HOST-POD Specifications, such as DES, DTCP, or MPEG-2; and

(b) user manuals and other written materials (whether in print or electronic form) that relate to the OpenCable HOST-POD Specifications and/or the DFAST Technology that have been provided by CableLabs hereunder, including materials for design (for example, flow charts and principles of installation, configuration, administration, and operation) and machine readable text or graphic files subject to display or print-out (“**Documentation**”).

1.4 “Certify” means the CableLabs’ controlled process to verify that a proposed Host Device or POD Module meets the Certification Criteria set forth in Exhibit A attached hereto (a “**Certification**”) as may be reasonably amended from time to time by CableLabs in accordance with changes made to the OpenCable HOST-POD Specifications made following the OpenCable Change Process (as defined below) and as disclosed to Licensee; “**Certified**” means that the Host Device has obtained Certification, and “**Qualified**” means that the POD Module has obtained Certification.

1.5 “Compliance Rules” mean the rules described on Exhibit C hereto which apply to POD Modules and Host Devices and are for the purpose of preventing the unauthorized copying of Controlled Content.

1.6 “Controlled Content” means content that has been transmitted from the headend with the copy control instruction bits set to a value other than zero.

1.7 “Derivative Work” means any work that is based upon CableLabs Technology, other than the OpenCable HOST-POD Specifications, such as a revision, improvement, enhancement, modification, translation, abridgment, condensation, expansion, collection, compilation or other form in which such CableLabs Technology may be recast, transformed, ported or adapted and that, if prepared without authorization of CableLabs, would constitute infringement.

1.8 “DFAST Technology” means the Licensed Patent collectively with the Licensed Know-How.

1.9 “Essential Patent Claim(s)” means claims of a patent or patent application, issued now or in the future, relating to inventions that are reasonably required for implementing DFAST Technology in Certified Host Devices and/or Qualified POD Modules, including any claims that cannot reasonably be designed around or that would be commercially or technically impractical to design around. Essential Patent Claims do not include any claims other than those set forth above even if contained in the same patent as Essential Patent Claims.

1.10 “Host Device” means a set-top terminal or navigation device for selecting Services on a program by program basis and that conforms to the OpenCable HOST-POD Specifications and utilizes the CableLabs Technology.

1.11 “Intellectual Property Rights” means all intellectual property rights worldwide arising under statutory law, common law or by contract, and whether or not perfected, including, without limitation, all (a) patents, patent applications and patent rights, (b) rights associated with works of authorship including copyrights, copyright applications, copyright registrations, mask work rights, mask work applications, mask work registrations, and Derivative Works of the foregoing (c) rights relating to the protection of trade secrets and confidential information, (d) trademarks, trade dress, trade name, design patent and service mark rights, whether or not registered and (e) divisions, continuations, continuations in part, renewals, reissues and extensions of the foregoing (as and to the extent applicable) now existing, hereafter filed, issued or acquired.

1.12 “Licensed Components” means component products which utilize the DFAST Technology and which are designed for incorporation into Prototypes, Certified Host Devices and/or Qualified POD Modules.

1.13 “Licensed Know-How” means all know-how, associated technology, trade secrets, copyrighted works, reference source code implementations, Diffie-Hellman system parameters, encryption and decryption keys, test data sets and test cases and other implementations of technology that CableLabs shall deliver to Licensee to assist in incorporating the DFAST scrambling technology into Host Devices or POD Modules.

1.14 “Licensed Patents” means U.S. Licensed Patent 4,860,353, any application, division, continuation or continuation in part of the foregoing patent, any patent reissuing on or reissuing pursuant to a reexamination of the foregoing patent and all foreign equivalents, together with any application or patent containing one or more Essential Patent Claims that may be licensable by CableLabs in the future. In the event that CableLabs may obtain by assignment, license, or other agreement in the future transferable rights under an application or patent containing Essential Patent Claims, CableLabs shall have the right to pass through to Licensee any royalties that may be owed by CableLabs under such assignment, license, or agreement based upon those activities of Licensee that are covered by the Essential Patent Claims. Such royalties shall be limited to no more than (\$____.00) per POD Module or Host Device sold or distributed by Licensee.

1.15 “Licensed Product” means the Licensee’s POD Module and/or Host Device, or either or both, and includes Licensed Components.

1.16 “OpenCable Change Process” means the process described on Exhibit E for making changes to the OpenCable HOST-POD Specifications.

1.17 “OpenCable HOST-POD Specifications” mean the OpenCable HOST-POD Interface Specification and the OpenCable POD Copy Protection System Specification, as posted on the <www.opencable.com> website.

1.18 “Prototype” means a pre-production model of a Host Device or a POD Module.

1.19 “POD Module” means an individual addressable device for authorizing and de-authorizing the decryption or descrambling of Services and individual programs and events delivered through the Host Device on a Service by Service or individual program or event basis that conforms to the OpenCable HOST-POD Specifications and utilizes the CableLabs Technology.

1.20 “Robustness Rules” mean the rules described on Exhibit B hereto which apply to POD Modules and Host Devices and are for the purpose of resisting attempts to modify POD Modules or Host Devices to defeat the functions of the OpenCable HOST-POD Specifications or the Compliance Rules.

1.21 “Service” means video, audio, or data signals, whether in analog or digital format, transmitted over the cable system to (or from) the Host Device, for the purposes of effectuating the reception or transmission of information, entertainment, or communications content.

1.22 “Test Tools” means devices which have the capability to utilize the DFAST Technology and which have as their purpose the testing or verification of the performance of Host Devices and/or POD Modules and their prototypes.

2. Licenses Grants and Restrictions.

2.1 Limited Development Right. Upon the execution of this Agreement and payment of the License Fee, subject to the terms and conditions set forth herein, including without limitation the Robustness Rules and the Compliance Rules, Licensee shall have the limited right:

(a) to possess and use the CableLabs Technology to develop and test no more than one thousand each Prototype Host Devices and/or POD Modules, Test Tools, and Licensed Components which are designed for incorporation into Prototypes,

(b) to distribute the Test Tools and Licensed Components only to entities who have obtained a license from CableLabs for the use of the CableLabs Technology (the “CableLabs Technology Licensees”),

(c) to exchange information about and test interoperability with the DFAST Technology only with other CableLabs Technology Licensees, and

(d) to distribute Prototypes to Cable Operators and other cable television multiple system operators in North America for the purpose of field trials and technology evaluation and not for retail.

2.2 Full License for CableLabs Technology. Subject to the terms and conditions set forth herein, including without limitation the Robustness Rules and the Compliance Rules, and upon the delivery of the Activation Notice to CableLabs in accordance with Section 3.2 hereof, CableLabs hereby grants to Licensee, and Licensee hereby accepts from CableLabs, a non-exclusive, non-transferable (except as set forth in Sections 2.3, 2.4 and 12.7 hereof) world-wide license under CableLabs' Intellectual Property Rights in the CableLabs Technology to:

(a) make, have made, use, sell, offer to sell, export, import and otherwise distribute Certified Host Devices and/or Qualified POD Modules utilizing the CableLabs Technology;

(b) practice any method or process under the CableLabs Technology solely as necessary for the manufacture or use thereof in accordance with the terms and conditions of this Agreement;

(c) make, have made, use, sell, offer to sell, import and otherwise distribute Derivative Works made by Licensee of the CableLabs Technology, *provided that* Licensee's rights under this Section 2.2(c) shall be exercised solely in connection with the creation, manufacture and distribution of the Certified Host Devices or Qualified POD Modules;

(d) use and reproduce the Documentation in order to modify the Documentation as reasonably required in connection with Licensee's creation of Derivative Works in accordance with this Agreement; and

(e) distribute the modified Documentation directly to customers in connection with the distribution of Certified Host Devices or Qualified POD Modules in accordance with this Agreement, provided that such modified Documentation shall not reveal any confidential information contained in the CableLabs Technology.

2.3 Limited Right for Test Tools. Licensee shall have the limited right to make, have made, use, sell, offer to sell and otherwise distribute Test Tools, subject to the following limitations:

(a) Licensee shall distribute the Test Tools containing the DFAST Technology only to CableLabs Technology Licensees. Licensee must separately maintain records of sales of Test Tools, and Licensee shall provide the names and addresses of each purchaser to CableLabs. Copies of such contracts for the distribution of Test Tools must be available for inspection by CableLabs with respect to the provisions relevant to the requirements of this Section 2.3.

(b) Licensee shall limit the use of Test Tools for the purposes of ensuring proper operation, testing, debugging, integration and tuning. For the purposes of this Section 2.3 (b), (i) "testing" shall mean a process of evaluating a Prototype to ensure proper operation; (ii) "debugging" shall mean a process of finding the cause of an error in a Prototype or Licensed Product, including analysis for the purpose of exposing possible design flaws; (iii) "integration" shall mean a process of evaluating the performance of a Prototype or a Licensed Product with a

POD Modules (in the case of a Host Device Test Tool) or Host Devices (in the case of a POD Module Test Tool), as the case may be, to ensure that they properly operate together; and (iv) “tuning” shall mean a process of evaluating and improving a Prototype or Licensed Product to work more efficiently with a POD Module or a Host Device, as the case may be.

2.4 Limited Right for Licensed Components. Licensee shall have the limited right to make, have made, use, sell, offer to sell and otherwise distribute Licensed Components, subject to the following limitations:

(a) Licensee shall distribute the Licensed Components containing DFAST Technology only CableLabs Technology Licensees. Licensee must separately maintain records of sales of Licensed Components, and Licensee shall provide the names and addresses of each purchaser to CableLabs. Copies of such contracts for the distribution of Licensed Components must be available for inspection by CableLabs with respect to the provisions relevant to the requirements of this Section 2.4.

(b) The Licensed Components shall, where possible, conform to the Robustness Rules and the Compliance Rules. Licensed Components must conform to the Robustness Rules and the Compliance Rules when incorporated into a Licensed Product.

2.5 No Other Licenses Granted. Except as provided herein, no license is granted by CableLabs, either directly or by implication, estoppel, or otherwise, and any rights not expressly granted to Licensee hereunder are reserved by CableLabs. No license is granted for any product or component which does not comply with the OpenCable POD-HOST Specifications, the Robustness Rules, the Compliance Rules and the Certification Criteria.

3. Delivery of CableLabs Technology, Changes to the OpenCable POD-HOST Specifications.

3.1 Delivery of CableLabs Technology. CableLabs agrees to deliver to Licensee one copy of the Licensed Know-How and the associated Documentation which shall include evaluation information only and not production information, for limited development purposes only in accordance with Section 2.1 hereof, within ten days of the receipt by CableLabs of the information required by Paragraphs 2 and 3 of Exhibit D, Activation Notice.

3.2 Activation. At any time after Licensee has paid the License Fee (as defined in Section 5.1), Licensee may execute the Activation Notice attached hereto as Exhibit D in accordance with the procedures set out therein. Prior to Activation, Licensee is not licensed to distribute any products or components hereunder, and the provisions of Sections 2.2, 2.3, 2.4, and 4.2 shall only be applicable after Activation. CableLabs agrees to deliver to Licensee one copy of the Licensed Know-How and the associated Documentation containing full production information, within ten days of the receipt by CableLabs of the Activation Notice.

3.3 Participation in Change Process. Licensee may participate in the OpenCable Change Process. No change shall be made to the OpenCable HOST-POD Specifications except through the Change Process. Licensee shall also have the right to participate in the drafting of, and to review and comment on, interoperability test plans, to participate in interoperability tests for implementations of the OpenCable HOST-POD Specifications and to review and comment

on proposed changes to the Compliance Rules, the Certification Criteria and the Robustness Rules.

3.4 Changes. The OpenCable HOST-POD Specifications may be amended from time to time by CableLabs, to correct any errors or omissions or to clarify, but not materially amend, alter or expand the same, in accordance with the OpenCable Change Process. Changes to the OpenCable HOST-POD Specifications made pursuant to the OpenCable Change Process shall not trigger any obligation to re-certify a previously certified product, to certify a product not previously subject to the Certification Criteria, nor to modify or re-label Licensed Products manufactured prior to such change. Such corrections or clarifications shall become effective after sixty days notice.

3.5 Material Changes. Licensee acknowledges that CableLabs, with input from Cable Operators, Licensee, other CableLabs Technology Licensees and other manufacturers participating in the OpenCable Change Process and video programming providers that provide copyrighted works for transmissions to Host Devices and the copyright owners of such work, may make material changes that constitute a new version of the OpenCable HOST-POD Specifications. Such material changes may include, by way of example and not of limitation, any changes that would require new technical features not included in previous versions, or create compatibility problems with Host Devices or POD Modules manufactured prior to such change, or would materially increase the cost or complexity of Host Devices or POD Modules. No such material change shall become effective until all interested parties described above shall have had an opportunity to review and comment on such material change. If any such material changes are made, CableLabs shall also revise the Certification Criteria to reflect such changes. Licensee shall not be required to comply with any material change, however Licensee agrees that it shall clearly label which version of the OpenCable HOST-POD Specifications a Licensed Product has been certified to meet.

4. Testing, Certification and Branding.

4.1 Testing and Certification. Prior to manufacturing on a production scale or distributing a Host Device or POD Module, Licensee shall participate in the CableLabs-sponsored OpenCable interoperability tests for the purpose of verifying that the proposed Host Device or POD Module conforms in all material respects to CableLabs' Certification Criteria set forth in Exhibit A. Licensee's submission for Certification to CableLabs shall include (a) a written statement confirming that the submitted Host Device or POD Module meets the Certification Criteria and (b) samples of the applicable Host Device or POD Module for audit testing by CableLabs. CableLabs shall use best efforts in the utmost of good faith to make the Certification Criteria and the certification process objective, fair and non-discriminatory.

4.2 Branding. Upon confirmation by CableLabs of satisfaction of the Certification Criteria, Licensee shall be authorized to market and distribute Certified Host Devices and/or Qualified POD Modules with the trademark, service mark or certification mark which signifies that the product is Certified or Qualified, as the case may be.

5. Payments; Accounting Requirements.

5.1 License Fee. As consideration for the licenses granted hereunder, Licensee agrees to pay CableLabs a one-time, non-refundable license fee of \$5,000 (the "License Fee")

within thirty days of the Effective Date. If Licensee has previously paid a fee to CableLabs for an evaluation license for the CableLabs Technology, the total amount of such previous payment shall be applied to the License Fee.

5.2 Applicable Taxes. CableLabs is exempt from income tax in the United States under Section 501(c)(6) of the Internal Revenue Code. The License Fee owed by Licensee to CableLabs is exclusive of, and Licensee shall pay, all sales, use, value added, excise, income tax, and other taxes that may be levied upon either party by taxing authorities other than the United States in connection with this Agreement, except for taxes based on CableLabs' employees.

6. Ownership and Confidentiality of CableLabs Technology.

6.1 Ownership. All of the CableLabs Technology is confidential and proprietary to CableLabs or the companies that have licensed to CableLabs, and all Intellectual Property Rights (except for Derivative Works made by Licensee which shall be owned by Licensee) therein shall be and remain the sole property of CableLabs or such licensors, and Licensee shall have no rights or interest in such CableLabs Technology other than the rights granted to Licensee under this Agreement. CableLabs retains all right, title and interest in and to any and all software development tools, know-how, methodologies, processes, technologies or algorithms used in connection with the CableLabs Technology that are trade secrets or proprietary information of CableLabs or its licensors, members, or affiliates, or are otherwise owned or licensed by CableLabs or its affiliates. Licensee will take all reasonable measures to protect CableLabs' Intellectual Property Rights in the CableLabs Technology, including such reasonable assistance and measures as are requested by CableLabs from time to time.

6.2 Confidentiality. Licensee agrees that the CableLabs Technology shall be kept confidential and shall not be disclosed by Licensee in any manner whatsoever, in whole or in part, and shall not be used other than in connection with the rights granted in Section 2 hereof. The Licensee shall be responsible for any breach of this confidentiality by its affiliates, agents, employees, representatives, former affiliates, former agents, former employees, and former representatives resulting from the Licensee's disclosure. Moreover, the Licensee shall agree to transmit the information only to its affiliates, agents, employees, and representatives who need to know the information and who are informed of the confidential nature of the information. However, CableLabs Technology does not include, and no obligation is imposed on, information which (i) is already in or subsequently enters the public domain through no breach of Licensee's obligations hereunder and which CableLabs failed to remove from public availability or to enjoin such public disclosure within 90 days after the date such information is or becomes generally known as set forth above ; (ii) is known to Licensee or is in its possession (as shown by tangible evidence) without conduct which would constitute a breach of Licensee's obligations hereunder prior to receipt from CableLabs; (iii) is developed independently by Licensee (as shown by tangible evidence) by persons who have not had, either directly or indirectly, access to or knowledge of CableLabs Technology; (iv) is lawfully received by Licensee from another party without a duty of confidentiality to CableLabs; or (v) is disclosed by Licensee pursuant to the order or requirements of a governmental administrative agency or other governmental body provided that such disclosure is pursuant to a protective order and CableLabs has been notified of such a disclosure request in advance.

7. Term and Termination.

7.1 Term. The term of this Agreement shall be the life of U.S. Licensed Patent 4,860,353, and shall be extended automatically thereafter indefinitely on a year by year basis unless earlier terminated according to its terms. Under no circumstances shall the term of the license for the Licensed Patents granted pursuant to Section 2 of this Agreement exceed the patent term of the last of the Licensed Patents to expire.

7.2 Termination of Licenses for Cause. CableLabs may terminate the licenses granted hereunder for any specific Host Device or POD Module that has not been Certified or that fails to satisfy the Robustness Rules or the Compliance Rules. However, CableLabs may only terminate the licenses pursuant to this Section 7.2 after CableLabs has (a) thoroughly evaluated the potential breach with respect to the relevant Licensee's Host Device or POD Module, (b) consulted with the relevant Licensee regarding the problem, (c) given written notice to the relevant Licensee of CableLabs' intent to terminate the license, and (d) provided Licensee with a reasonable opportunity to cure the breach (where such breach is capable of being cured) and such breach remains uncured for sixty days following the date of such notice, or, if such breach cannot by its nature be cured within such period, if Licensee has not commenced, and thereafter at all times diligently pursues, commercially reasonable efforts to cure as soon as possible thereafter. In circumstances where Licensee's failure subjects Controlled Content to an unreasonable risk of unauthorized copying, the maximum period for the activities in clauses (a), (b), (c) and (d) of the preceding sentence shall be forty-five days and the cure period under clause (d) of the preceding sentence shall be thirty days.

7.3 Termination of Agreement for Cause. CableLabs may terminate this Agreement in the event that CableLabs provides notice of Licensee's material breach of any representation, warranty or covenant set forth in Section 5.1 or 8.2 hereto and (where such breach is capable of being cured) such breach remains uncured sixty days following the date of such notice.

7.4 Effect of Termination. Upon the termination of the licenses granted hereunder for any specific Host Device pursuant to Section 7.2, Licensee may no longer make, have made, use, sell, import or distribute such Host Device, use the CableLabs Technology therewith, nor use the CableLabs or OpenCable brand in connection with such Host Device, except that, if the termination did not result from Licensee's failure to satisfy the requirements of the Robustness Rules or the Compliance Rules, Licensee may sell or distribute any remaining Qualified POD Modules and Certified Host Devices provided that the CableLabs or OpenCable brand is not used. Upon the termination of the licenses granted hereunder for any specific POD Module pursuant to Section 7.2, Licensee may no longer make, have made, use, sell, import or distribute such POD Module, use the CableLabs Technology therewith, nor use the CableLabs or OpenCable brand in connection with such POD Module, and Licensee shall immediately return all copies of the CableLabs Technology to CableLabs, or destroy all such copies to the reasonable satisfaction of CableLabs. Licenses properly granted by Licensee in conjunction with the sale or distribution of a Certified Host Device or Qualified POD Module by Licensee pursuant to Section 2.2 prior to the date of termination shall remain in full force and effect. Unless otherwise stated herein, no termination of this Agreement or any license granted hereunder shall relieve either party of any obligation or liability accrued hereunder prior to such termination, or rescind or give rise to any right to rescind anything done by either party prior to

the time such termination becomes effective nor shall the survival provisions of Section 12.13 be affected by such termination

8. Representations, Warranties, Covenants and Disclaimers.

8.1 CableLabs. CableLabs represents and warrants that:

(a) CableLabs owns all right and title to the CableLabs Technology, or otherwise has the right to grant the license thereof, and to the best of CableLabs' knowledge, free of any claim or other encumbrance of any third party. None of the CableLabs Technology is or ever has been declared invalid or unenforceable, or is the subject of a pending or threatened action for opposition, cancellation, declaration of invalidity, unenforceability or misappropriation or like claim, action or proceeding;

(b) Without investigation, it is not aware of any notice or claim, threatened or pending, that the use of the CableLabs Technology in accordance with the terms of this Agreement infringes any third party's Intellectual Property Rights. Otherwise, the CableLabs Technology is licensed on an "as is" basis;

(c) CableLabs has authorized the person who has signed this Agreement for CableLabs to execute and deliver this Agreement to Licensee on behalf of CableLabs; and

(d) This Agreement constitutes a valid and binding obligation of CableLabs, enforceable according to its terms.

8.2 Licensee. Licensee represents, warrants, and covenants that:

(a) Licensee has authorized the person who has signed this Agreement for Licensee to execute and deliver this Agreement to Licensee on behalf of Licensee;

(b) This Agreement constitutes a valid and binding obligation of Licensee, enforceable according to its terms; and

(c) As to each of the Host Devices and POD Modules made under this Agreement, Licensee covenants to CableLabs as follows:

(i) The Host Device or POD Module contains no integrated circuit, ROM, RAM, software or other device or functionality that:

(1) enables copying or recording of copyrighted works or storage of any signal that are/is delivered to the Host Device or POD Module except as permitted by the Compliance Rules; or

(2) interferes with or disables the ability of a Cable Operator to communicate with or disable a POD Module or services being transmitted through a POD Module.

(ii) The Host Device maintains control of content copies consistent with copy control instructions embedded in digital signals as specified in the OpenCable HOST-POD Specifications.

(iii) The Host Device or POD Module effectively frustrates tampering and reverse engineering directed toward defeating copy protection schemes, in accordance with and as defined in the Robustness Rules.

(iv) The Host Device does not transmit or decode Controlled Content received from the cable television transmission without proper authorization from the Cable Operator

8.3 Disclaimers. Except as expressly set forth in this Section 8, EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, (A) ANY WARRANTY THAT THE CABLELABS TECHNOLOGY DOES NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER PERSON OR ENTITY, (B) ANY WARRANTY THAT ANY CLAIMS OF THE LICENSED PATENT ARE VALID OR ENFORCEABLE, (C) ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR (D) THAT THE RIGHTS AND LICENSES GRANTED TO LICENSEE HEREUNDER COMPRISE ALL THE RIGHTS AND LICENSES NECESSARY OR DESIRABLE TO PRACTICE, DEVELOP, MAKE OR SELL POD MODULES OR HOST DEVICES. THE CABLELABS TECHNOLOGY AND ENHANCEMENTS THERETO, AND ANY OTHER ITEMS, DELIVERABLES, OR INFORMATION SUPPLIED BY OR ON BEHALF OF CABLELABS ARE PROVIDED ON AN "AS IS" BASIS.

8.4 Joint Defense of Intellectual Property Claims. If CableLabs on the one hand and Licensee on the other hand (each, a "**Defendant**"), should be sued on a single claim or related claims that the CableLabs Technology necessarily infringes the patent or other rights of another party, or a Defendant's implementation of the CableLabs Technology infringes the patent or other rights of another party, or a single claim or related claims that the continued licensing making, using, and selling of implementations of the CableLabs Technology is in some manner in violation of law (a "**Suit**"), then the Defendants shall provide reasonable information and cooperation relating to their Suits, and CableLabs shall (subject to advice of litigation counsel) permit participation in the suit by the non-CableLabs Defendant at its own expense. Further, CableLabs and Licensee shall endeavor to negotiate in good faith a joint defense agreement whereby common claims against all Defendants may be defended in a coordinated and efficient manner. CableLabs and Licensee shall establish a joint steering committee to negotiate in good faith allocations of joint defense costs where possible.

8.5 Covenant of Non-Suit. CableLabs and Licensee hereby agree and covenant not to bring against CableLabs or any CableLabs Technology Licensee any claim alleging that the making, using, selling, offering for sale, importing, or distributing of (a) Prototypes utilizing the CableLabs Technology for the sole purpose of conducting tests and field trials with Cable Operators; (b) Certified Host Devices and/or Qualified POD Modules utilizing the CableLabs Technology; (c) Test Tools utilizing the CableLabs Technology; or (d) Licensed Components utilizing the CableLabs Technology infringes any Essential Patent Claim(s) owned or licensable by CableLabs or Licensee, *provided that* the foregoing obligation shall lapse as to CableLabs or any Licensee (including its assignee or successor) if CableLabs (in the case of such Licensee) or such Licensee (in the case of CableLabs' obligations) initiates a claim:

(a) against any CableLabs Technology Licensee or against CableLabs alleging that its making, using, selling, offering for sale, importing, or distributing such Prototypes or Certified Host Devices and/or Qualified POD Modules infringes any Essential Patent Claim(s) of CableLabs or the Licensee making the allegation; or

(b) against any CableLabs Technology Licensee or against CableLabs alleging that its making, using, selling, offering for sale, importing, or distributing such Prototypes or Certified Host Devices and/or Qualified POD modules induces or contributes to any infringement of any Essential Patent Claim(s) of CableLabs or the Licensee making the allegation.

8.6 Technology Substitution in the Event of a Claim of Infringement. If CableLabs on the one hand or Licensee on the other hand receives notice that the DFAST Technology allegedly infringes a patent of a third party, then CableLabs may, at its sole option and expense, obtain for Licensee the right to use technology that is substantially equivalent to the DFAST Technology, complies with the OpenCable HOST-POD specifications, or modifications to those specifications, and does not infringe the patent.

9. Limitation of Liability.

In no event shall either party be liable to the other for consequential, incidental, special, indirect, punitive or exemplary damages of any kind, including without limitation loss of profit, savings or revenue, or the claims of third parties, whether or not advised of the possibility of such loss, however caused and on any theory of liability, arising out of this Agreement or based on the making, using, selling or importing any product that implements the CableLabs Technology. In no event shall either party be liable to the other under any circumstances under this Agreement for any amount in excess of the amount paid by Licensee to CableLabs pursuant to Section 5 herein. Notwithstanding the foregoing, the limitation of liability amount set forth above shall be replaced with \$1,000,000 if Licensee is in material breach of the Compliance Rules, the Robustness Rules or any provision of Section 6.2 regarding the security or integrity of the CableLabs Technology.

For purposes of this Agreement, a breach shall be “material” only if it has resulted in or would be likely to result in commercially significant harm to CableLabs, or constitutes a threat to the integrity or security of DFAST Technology. In addition, the following is a non-exclusive list of circumstances in which there is no material breach of the applicable provisions: (1) if no Confidential Information was released to a third party not permitted hereunder to have such information or could reasonably have been expected to have been released to such third party as a result of the breach; (2) if Licensee maintains an internal program to assure compliance herewith (including a program to assure maintenance of inventory, samples, and confidentiality of information for purposes in addition to compliance with this Agreement), the breach was inadvertent or otherwise unintentional, and the breach did not have a material adverse effect on the integrity or security of the DFAST Technology; or (3) if Licensee brought the breach to CableLabs’ attention in a timely manner as required by this Agreement and such breach did not have a material adverse effect on the integrity or security of DFAST Technology.

10. Infringement by Third Parties.

Each party shall promptly notify the other in writing of any apparent infringement of the Licensed Patent by any third party that is known to or comes to the attention of such party. The notification shall include an identification of the suspected product and manufacturer or distributor, as the case may be, and shall further include sufficient information of which such party is then aware to enable the other party to establish a showing of infringement.

11. Publicity.

Following the execution of this Agreement, each party may disclose in media releases, public announcements and other public disclosures, including without limitation promotional or marketing materials, the execution of this Agreement and the fact that Licensee is licensing the CableLabs Technology for Certified Host Devices and Qualified POD Modules, *provided that* such party first obtains the other party's written consent. Either party may disclose the existence of this Agreement when and as required by law or regulation.

12. Miscellaneous.

12.1 Grant of Rights to Third Party Beneficiaries. Compliance by Licensee with the terms hereof is essential to maintain the value and integrity of the CableLabs Technology. As part of the consideration granted herein, upon Activation, Licensee agrees that video programming providers that provide Controlled Content for transmissions using the CableLabs Technology to Host Devices and owners of copyright in such works (collectively, "**Content Providers**") and Cable Operators (collectively with Content Providers, "**Third-Party Beneficiaries**") shall each be a third-party beneficiary of this Agreement and shall be entitled to bring a claim or action against Licensee to seek injunctive relief [and actual damages--under consideration] against the manufacture, distribution, commercial use and sale of Licensee's products that are in material breach of the Compliance Rules or the Robustness Rules that constitutes a threat to the integrity or security of the CableLabs Technology. In any such claim or action, reasonable attorneys' fees shall be awarded to the prevailing party. [Such third party beneficiaries may seek such relief for actual damages (up to the \$1,000,000 limit contained in Section 9) only after the procedures set forth in the last section of Section 7.2 hereof have been followed by such third party beneficiary and only for material breaches (breaches that constitute a threat to the integrity or security of the CableLabs Technology) that are also willful and in bad faith.--under consideration]

12.2 Independent Contractors. The relationship established between the parties by this Agreement is that of independent contractors. Nothing in this Agreement shall be construed to constitute the parties as partners, joint venturers, co-owners, franchisers or otherwise as participants in a joint or common undertaking for any purpose whatsoever.

12.3 No Trademark Rights Granted. Except as expressly provided in this Agreement, nothing contained in this Agreement shall be construed as conferring any right to use in advertising, publicity, or other promotional activities any name, trade name, trademark or other designation of either party hereto (including any contraction, abbreviation or simulation of any of the foregoing).

12.4 No Patent Solicitation Required. Except as expressly provided herein, neither party shall be required hereunder to file any patent application, secure any patent or patent rights, provide copies of patent applications to the other party or disclose any inventions described or claimed in such patent applications.

12.5 Law and Jurisdiction. THIS AGREEMENT SHALL BE CONSTRUED, AND THE LEGAL RELATIONS BETWEEN THE PARTIES HERETO SHALL BE DETERMINED, IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REGARD TO ITS CONFLICT OF LAWS RULES.

12.6 Compliance with Laws. In connection with this Agreement, each party shall comply with all applicable regulations and laws, including export, re-export and foreign policy controls and restrictions that may be imposed by any government. Each party shall require its customers to assume an equivalent obligation with regard to import and export controls.

12.7 No Assignment. Licensee shall not assign any of its rights or privileges under this Agreement without the prior written consent of CableLabs, such consent not to be unreasonably withheld or delayed. No consent shall be required for the assignment of this Agreement to any wholly-owned subsidiary of Licensee or for the assignment in connection with the merger of the sale of Licensee or Licensee's business unit provided that Licensee shall remain liable for its obligations hereunder. Any attempted assignment or grant in derogation of the foregoing shall be void.

12.8 Notice. Any notices required or permitted to be made or given to either party pursuant to this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written notification of receipt; (c) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, five days after deposit in the mail. All notices must be sent to the address set forth below, or to such other address as the receiving party may have designated by written notice given to the other party:

- (a) for **CableLabs**,
Attention: General Counsel
400 Centennial Parkway,
Louisville, CO 80027-1266
fax: 303/661-9199; and

(b) for Licensee,

_____.

fax: _____

12.9 Amendments. No amendment or modification hereof shall be valid or binding upon the parties unless made in writing and signed by both parties.

12.10 Waiver. Any waiver by either party of any breach of this Agreement shall not constitute a waiver of any subsequent or other breach.

12.11 Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired thereby.

12.12 Headings. The headings of the several sections of this Agreement are for convenience and reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

12.13 Survival. The following sections of the Agreement shall survive any termination of the Agreement: Sections 5.2, 6, 7.4, 8.2, 8.3, 8.4, 9, 11, 12.1, 12.13.

12.14 Entire Agreement. This Agreement embodies the entire understanding of the parties with respect to the subject matter hereof and merges all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter hereof other than as expressly provided herein.

12.15 Most Favored Status. CableLabs shall make available to Licensee its substantial commitments or clarifications regarding the standard POD-HOST Interface License Agreement (the "PHILA") through notice to Licensee. CableLabs also commits that the benefit of any of its modifications, clarifications or interpretations of language in the standard PHILA shall be extended to Licensee in accordance with this Section 12.15. Where CableLabs agrees to make a change to a particular licensee's PHILA, Licensee shall be given the option to upgrade to such revised agreement. Prior to such time as CableLabs makes a revised or upgraded standard PHILA, where CableLabs has agreed to include language in a particular PHILA that is more favorable than that in the then current version of the standard PHILA, CableLabs shall not

enforce the language in this Agreement with respect to Licensee to the extent that such language is less favorable than that language found in such other licensee's PHILA.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly signed and to be effective as of the Effective Date above.

[Licensee]

Cable Television Laboratories, Inc.

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

LIST OF EXHIBITS:

Exhibit A: Certification Criteria

Exhibit B: Robustness Rules

Exhibit C: Compliance Rules

Exhibit D: Activation Notice

Exhibit E: OpenCable Change Process

Exhibit A

CableLabs' Certification Criteria for Host Devices and POD Modules

In order to foster interoperability and hence retail availability of advanced digital Host Devices, and to protect the integrity of the security of cable television networks, the license granted in Section 2.2 hereof is for POD Modules and Host Devices which meet the following requirements:

1. The Host Device is submitted for Certification or the POD Module is submitted for Qualification, in accordance with the OpenCable Certification Wave Guidelines as published on the <www.opencable.com> website for the implementation in question.
2. The Host Device or POD Module has passed the Interoperability Audit Acceptance Test Plan as published on the <www.opencable.com> website (and as referred to in the OpenCable Certification Guidelines) for the implementation in question, as tested by CableLabs in a fair, objective, verifiable and non-discriminatory manner. If the Host Device or POD Module does not pass the audit by CableLabs, the Licensee will be informed of the specific reasons for such failure, and shall be given an opportunity to correct in a timely fashion and re-request certification in accordance with the OpenCable Certification Guidelines.

Exhibit B

Robustness Rules for the POD-HOST Interface

[Intentionally left blank]

Exhibit C

Compliance Rules

[Intentionally left blank]

Exhibit D

ACTIVATION NOTICE

Licensee having entered into a POD-Host Interface License Agreement (the "License Agreement") with CableLabs hereby activates its rights under and in accordance with Section 3.2 of the License Agreement, subject to the following:

1. Licensee is a: ☐ POD manufacturer
☐ Host Device manufacturer
☐ a component manufacturer
☐ a manufacturer of test tools
(Check all categories that apply)
2. CableLabs uses a robust, commercially available hybrid cryptographic system to protect the integrity of DFAST Technology transported via common carrier between CableLabs and Licensee. The protection is necessary to ensure the authenticity and confidentiality of the order. CableLabs has chosen Network Associates' PGP to protect this distribution.

It can be obtained from:

U.S. Contact:

McAfee Software
3965 Freedom Circle
Santa Clara, CA USA
95054
Tel: (408) 988-3832
Fax: (408) 970-9727
<http://www.nai.com/>

International Contact:

Network Associates International B.V.
Gatwickstraat 25
1043 GL Amsterdam
The Netherlands
Tel.: +31-(0) 20-586 6100
Fax.: +31-(0) 20-586 6101
<http://www.pgpinternational.com/>

An example of the appropriate product is "PGP Desktop Security" available at <http://store.mcafee.com/>.

Licensee must obtain a copy of PGP and generate a public/private key pair of type Diffie-Hellman/ DSS with a size of 2048/1024. Prior to receiving the DFAST Technology, Licensee will provide its public key to CableLabs on a CD-ROM.

CableLabs will forward the DFAST Technology, encrypting the contents of the order using PGP with Licensee's public key prior to writing it to CDROM media. When Licensee receives the CDROM containing the information from CableLabs, Licensee can decrypt the information using its private key prior to using the cryptographic materials. If for some reason a Licensee cannot use PGP, it should contact CableLabs to arrange an alternative delivery option.

3. CableLabs shall send the DFAST Technology (encrypted as set forth above) necessary to activate the Full License via overnight delivery service to the attention of _____ at the following address:

4. All capitalized terms not otherwise defined herein shall have the meanings set forth in the License Agreement.

LICENSEE:

(Name of company)

Authorized Signature

Name

Title

Date

Street Address

City, State, Zip or Postal Code, and Country

Phone Number

Fax Number

Exhibit E

OPENCABLE CHANGE PROCESS

OVERVIEW

As OpenCable™ Interim documents are released, they become subject to the formal CableLabs change process that is summarized below. Recall that an Interim document is one which has undergone rigorous Member and vendor review, suitable for use by vendors to design in conformance to and for field testing.

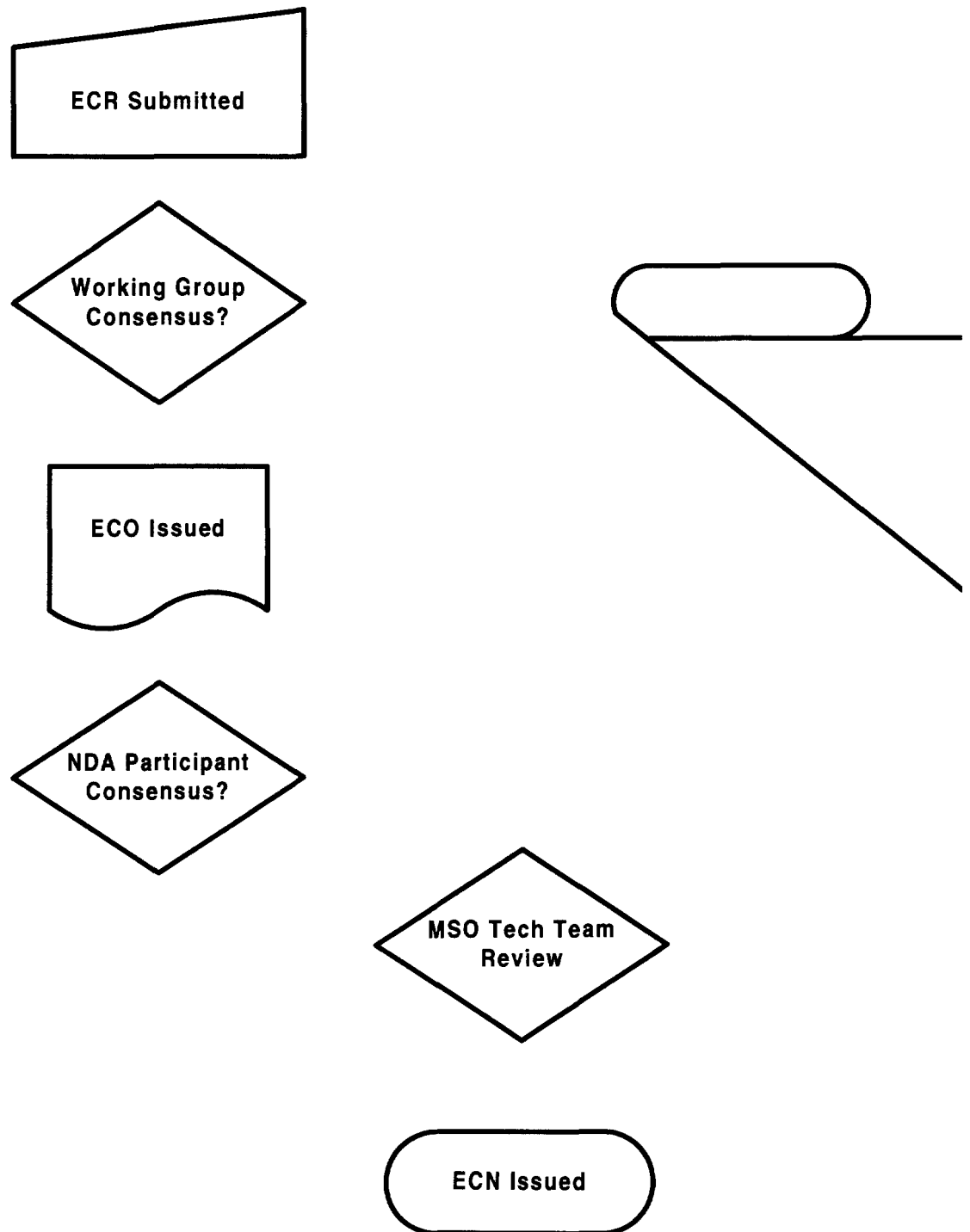
This process can be initiated by anyone with an interest in the specification at any time during the life of the specification. However, this process is of changes in the nature of clarifications and bug fixes discovered during the development and interoperability stages and is not intended to impose major revisions to the specification. Engineering Change Requests (ECRs) should be submitted electronically to opencable@cablelabs.com using the attached form.

Vendors submitting comments in the form of an ECR, grant CableLabs the right to incorporate such ECRs into relevant specifications, to disclose such ECRs to members, vendors and others participating in the OpenCable process, and to seek public review of such specifications when CableLabs deems appropriate. If Vendor is claiming any intellectual property rights in an ECR submission, such rights should be specifically identified so that such property may be treated appropriately.

Due to the large numbers of vendors that have expressed interest in OpenCable documents, vendors should be aware that the OpenCable team will not be able to provide individual responses to each vendor's ECR form. Receipt of ECR submissions will be confirmed by email. Please be assured that all ECRs will be duly considered. Final decisions concerning which ECRs will be incorporated in final documents will be the sole discretion of the OpenCable team.

The diagram on the next page provides an overview of the ECR, ECO, ECN process.

OpenCable™ ECR-ECO-ECN Process



WHICH FORM TO USE

- Engineering Change Request (ECR) Form, attached to the end of this document.

ECR'S

- **Can originate by anyone at anytime. Applies to Public Specifications.**
- **One ECR can include all editorial comments for a given specification**
- **One ECR must be submitted for each separate technical issue.**
- **If the same issue applies to multiple specifications, they may be combined.**
- **All required information must be supplied**
- **Must be submitted electronically to opencable@cablelabs.com**

ECR REQUIRED INFORMATION

- **Full identity of person & company making submission**
- **Document Reference Number, Section Numbers**
- **Motivation: Why are you submitting this change?**
- **Detail Problem Statement**
- **Proposed Changes - How would you fix it?**
- **Ramifications - What is the impact?**

COMMENT PERIODS

- **Comment Period for ECRs**
 - May be submitted anytime after release of Specification
 - Undergoes “Specialist Review” for two weeks after being received.
 - If Approved, moves to Engineering Change Order (ECO)
- **Comment Period for ECOs**
 - Two week comment period with full NDA list.

ECR/ECO REVIEW PROCESS

- Each ECR will be logged and assigned a sequential number by OpenCable staff and assigned a due date.
- The ECR will be distributed by email to an appropriate team of specialists for review and clarification. This specialist working group is determined by the OpenCable team, to include MSO and Vendors with a specific technical expertise and interest in the affected technology.
- Each ECR has 2-week review by specialist working group
- If approved, it becomes Engineering Change Order (ECO).
- ECO goes to full NDA List for comment and consensus (2-weeks)
- Posted on OpenCable LiveLink site
- Silence is taken as approval
- Final approval is subject to the MSO Technical Team even in the absence of NDA consensus.
- Once approved, they become Engineering Change Notice (ECN)

ECN'S

- **Posted Publicly to OpenCable LiveLink Site**
- **Notification to full NDA List upon posting**
- **Imposes changes to the specification**
- **Specification users must update based on all available ECN's.**
- **Grace period to affect ATP is typically 2 months.**

SPECIFICATION REVISIONS

- **Interim Specs will be revised as needed with each ECN release until July, 2000.**
- **Scheduled revisions will process accumulated ECN's after July, 2000**

Name:

Company:

Address:

City, State Zip:

Phone:

Fax:

E-mail Address:

Date of Request:

Affected Document:

Motivation:

Problem Description:

Proposed Changes:

Ramifications: